

REMARKS

Applicant appreciates the thorough examination of the present application as evidenced by the final Office Action of January 6, 2011 (hereinafter "Final Action") and the Advisory Action of March 30, 2011 (hereinafter "Advisory Action"). In response, Applicant has amended Claim 10 to remove the recitations of "transposing frequency data in the music score file to a higher frequency range," to clarify that the music file recited therein is modified by replacing a specification of an instrument provided in the music score file for the identified audio data with a substitute specification of an instrument having brighter timbre. Also, Claims 4-6 and 15 have been canceled, and Claims 7-9 have been amended to depend from Claim 1. No new matter has been added.

Accordingly, Applicant respectfully requests further consideration of the pending claims and allowance of the present application for at least the reasons that follow.

Status of the Claims

Claims 1-16 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent Application Publication No. 2001/0049994 to Wachi et al. ("Wachi") in view of U.S. Patent No. 5,590,282 to Clynes ("Clynes").

Independent Claims 1 and 10 Are Patentable Over Wachi and Clynes

Independent Claims 1 and 10 stand rejected under 35 USC §103(a) as being unpatentable over Wachi in view of Clynes. *See* Final Action, Pages 2-5. Claim 10, for example, recites:

10. An apparatus for rendering sampled data from a music file according to a transmission characteristic of a loudspeaker of a mobile terminal of a wireless communication system, the apparatus comprising:
storage means for storing the music file and data related to transmission characteristics of one or more loudspeakers,
selection means for selecting data for a particular loudspeaker from the storage means,
low frequency sound identification means for identifying audio data in the music file which represent a sound with a spectral component below a transmission frequency range of the particular loudspeaker corresponding to the selected data,
control means for controlling a modification of a sound reproduction from the identified audio data such that the modified sound reproduction yields a sound spectrum having an increased energy content within the

transmission frequency range of the particular loudspeaker as compared to a sound spectrum of an unmodified sound reproduction; and
synthesizing means for synthesizing sampled data from a modified music file,

wherein the music file is a music score file, and **wherein the control means modifies the music score file** to provide the modified music file **by replacing a specification of an instrument provided in the music score file** for the identified audio data **with a substitute specification of an instrument having brighter timbre.** (*Emphasis added*).

However, Wachi and Clynes fail to disclose or suggest several of the recitations of Claim 10. For example, the cited references do not disclose or suggest "**replacing a specification of an instrument provided in the music score file...with a substitute specification of an instrument having brighter timbre,**" as recited by Claim 10.

In particular, the Final Action concedes that Wachi does not disclose a music score file. *See* Final Action, Page 4. Thus, Wachi necessarily does not disclose or suggest a specification of a particular instrument in such a music score file, nor replacing such an instrument specification "with a substitute specification of an instrument having brighter timbre," as recited by Claim 10.

Nor does Clynes disclose or suggest these recitations. Clynes describes a system where a user can access a library of stored music scores, and can create his own 'microscore' to be imparted to the notes of a selected music score to create a personally meaningful or expressive performance. *See* Clynes, Abstract and Col. 4, lines 53-61. In particular, Clynes notes that a user can use a user interface to "[s]witch the instruments that play" in a music score. *See* Clynes, Col. 5, line 60. However, generally disclosing the ability to switch instruments in a score based on a user's preferences, as described in Clynes, does not necessarily disclose or suggest replacing a specification of an instrument with that of an instrument having a brighter timbre. Indeed, the user's preference may indicate an instrument having a lower timbre, such that the instrument originally specified in the music score may be switched with an instrument having a lower timber. Thus, even if combined, the cited references do not disclose or suggest replacing a specification of an instrument "with a substitute specification of an instrument having a brighter timbre," as recited by Claim 10.

Furthermore, as stated in the MPEP, "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." MPEP §2142 (*citations omitted*). Likewise, the *2010 KSR Guidelines Update* (published in the Federal Register on September 1, 2010) notes that "merely pointing to the presence of all claim elements in the prior art is not a complete statement of a rejection for obviousness" and that "a proper rejection based on the rationale that the claimed invention is a combination of prior art elements also includes a finding that results flowing from the combination would have been predictable to a person of ordinary skill in the art." "Examination Guidelines Update: Developments in the Obviousness Inquiry After KSR v. Teleflex; Notice," 75 Federal Register 169 (1 September 2010), pp. 53647.

However, the Final Action provides no such finding or rational underpinning, but rather, asserts that it would be obvious to incorporate the music scores described in Clynes with the apparatus of Wachi "for purpose of rendering the music scores meaningful and expressive" (Final Action, Page 4), which merely repeats a stated goal of Clynes (*see* Clynes, Col. 4, lines 10-11). Thus, as the Final Action merely points to the presence of the claim elements without providing a line of reasoning as to why it would be predictable to one of ordinary skill in the art to combine the teachings of Wachi (which is concerned with generating tones based on the dynamic range of a selected sound system) with those of Clynes (which is concerned with allowing a user to create expressive music), Applicant respectfully submits that the Final Action's rationale is contrary to both MPEP §2142 and the *2010 KSR Guidelines Update*. Accordingly, while Wachi may disclose increasing a frequency of a designated pitch in a sounding instruction that is lower than a critical pitch associated with a speaker, and while Clynes may disclose a music score where a specified instrument may be switched based on a user's preferences, merely pointing to the presence of these various elements does not establish that the combination of these elements would have been predictable to a person of ordinary skill in the art to provide a system configured for "replacing a specification of an instrument provided in the music score file...with a substitute specification of an instrument with brighter timbre," as recited by Claim 10.

For at least these reasons, Applicant submits that the Final Action has failed to establish a *prima facie* case of obviousness, and that Claim 10 is therefore patentable over the

cited references. Claim 1 includes method recitations corresponding to the apparatus of Claim 10, and is thus patentable for at least similar reasons. Also, dependent Claims 2, 3, 7-9, and 11-14 are patentable at least per the patentability of Claims 1 or 10 from which they depend.

Conclusion

Accordingly, based on the above amendments and remarks, Applicant submits that the pending claims are now in condition for allowance. Thus, Applicant respectfully requests allowance of these claims and passing the application to issue. Applicant encourages the Examiner to contact the undersigned to resolve any remaining issues.

Respectfully submitted,




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